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ABSTRACT

The early development of university legal education in England, the United States, and Germany is examined. Focus is on: (1) the different historical and social processes that have brought law and higher education together and (2) examination of a more general, comparative nature about the institutional transformation of legal education in these countries. Depending on social, economic, and political realities within each country, the development of the relationship between law and university education are established. Similarities are noted between England and the United States in that legal education consisted in its early beginnings within a well-established system of apprenticeship training. In Germany, it is noted that legal training has always been associated with the universities. These tendencies are shared among all three nations: (1) there is a general movement toward the differentiation of training and practice functions within the profession; (2) as professional training grows more distinct, it becomes a function of higher education; and (3) when universities do gain control of the training function, they do so only after convincing themselves that law is "rational" or a "science", that law really belongs in their curricula. (IC)

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Classroom Law:
The Early Development of University Legal Education in England, the United States, and Germany

by

Mitchell Lewis Rothman

YALE HIGHER EDUCATION RESEARCH GROUP
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Preface

This is a study of the early development of university legal education in three nations. Today, in each, those who wish to become lawyers receive at least their initial professional training inside university classrooms. In Germany, this has always been true; in England and the United States, it has been true only in the relatively recent past. The primary focus of this paper will therefore be on the different historical and social processes that, in each instance, have brought law and higher education together. Secondarily, the paper will attempt to say something of a more general, comparative, nature about the institutional transformation of legal education in these countries.

As this is a work whose title promises the story of the "early development" of legal education, events in each nation will be reviewed only until a system of legal training that is fundamentally similar to today's is clearly in place. Despite this, however, the reader should be warned that consideration of developments well into the twentieth century in the case of both England and America will be required to answer the question, "Why are lawyers trained in the universities?"

Any account of the development of modern university legal education must really begin in 11th century Italy, for it was there that the first arrangements for the professional study of law in the West were made.[1] However, to fully understand the early evolution of legal education in Europe, one must first inquire into the general state of medieval education.[2]

In France, the complete overthrow of Roman civilization and the ecclesiastical legislation of Charlemagne tied education to the monasteries and cathedrals. Indeed, in all of 11th century northern Europe, education was the sole responsibility of the church. Schools were in some way connected with ecclesiastical institutions, and students were most often clerical aspirants. In Italy, on the other hand, Roman educational traditions had not been completely broken off, and the practice of lay teaching continued.

Curriculum, too, differed on either side of the Alps. Although the seven liberal arts were everywhere the same, the relative importance of each varied. In the North, metaphysical and theological dialectic received the greatest emphasis; in the South, grammar and rhetoric were favored. Law was thought illustrative of these subjects, and as such, was taught at both church and lay schools throughout northern Italy. Rhetoric was divided into three parts: demonstrative, deliberative, and judicial. Thus, in Italy at least, a liberal education served as excellent preparation for the

work of the notary and pleader and for the verbal jousts of the law courts throughout the so-called "Dark Ages".

Such employment was possible in much of northern Italy, for a secular, municipal political system had survived, and the continuity of city life remained essentially intact. Indeed, by the 11th century, the first stirrings of the commercial and civic activity that were to eventually flower into the intellectual, artistic, and political vigor of the Italian Renaissance could be felt. Men with systematic, thorough training in law were much in demand. The revival of legal science at the nascent University of Bologna was a natural result.

Pavia, and possibly Ravenna, had been early centers of legal education, but by 1100 they had been eclipsed by Bologna. The first of the Bolognese legis doctors[3] was probably Peppo, who taught at the close of the eleventh century. His successor, Irenerius, a self-taught Master of Arts, was the first to really study and copy Justinian's[4] works, rearranging them and adding commentary. It is Irenerius who is generally given credit for having founded the law school at Bologna; the date most commonly given for this event is c. 1100. At first, there was at most only a small study group of students who gathered to hear Irenerius. Only by the next generation is it clear that law was being taught regularly in a classroom.

Irenerius's career marked the formal introduction of the entire Roman Corpus Juris Civilis into the legal

curriculum. This event had important insitutional implications. Law students now had no time for other courses; law had become a technical subject to be studied after one's liberal arts training was complete. Too, the distinction between teachers and students of the law, and other teachers and students, was now more distinct. Law was no longer a branch of rhetoric, but a professional subject in its own right.

Connected with this change was the rise in prestige of the law doctor, for legal knowledge was politically and commercially valuable. The most famous of the Bolognese masters, Irenerius and his immediate successors, were active in the cause of the Emporer in his continuing struggle with the Pope. Jurists were able to serve as judges and magistrates, as civil servants, and as consultants on matters of civil law. Indeed, a Bolognese statute of this period provided that no one could serve as a judge or consultant if they had not studied law for five years. We shall later see other instances in which apparent increases in the difficulty of educational subject matter and the expertise required to practice law worked to the profession's advantage.

Aspirants were quick to appreciate the relevance of the new curriculum. By the middle of the twelfth century, there were certainly foreign students who had specifically come to Bologna to study law, for they had formed student organizations for self-protection. In fact, there were

probably two distinct schools of law at Bologna: one for Italians, the other for those from other countries who were attracted to the famous school. Additional evidence of this is provided by Emporer Frederick Barbarossa's habita of 1158, the first general charter of privileges for university students, which explicitly granted protection to foreign law students. At the time, the Emporer could only have been referring to students at Bologna.

As was typical in the medieval university, lectures were held at the master's home or in premises specifically rented for such purpose. Students paid fees directly to the instructor. The basic text was the Corpus Juris Civilis, with medieval glosses. We also know that special moot court exercises were held.

After five or six years of legal study, students were designated Bachelors, and permitted to lecture themselves. Admission to doctoral candidacy required a total of seven years of study and the presentation of a full course of lectures. The doctoral degree itself was awarded only after both private examination and public questioning before the entire College. It was marked with an elaborate public ceremony in the Cathedral, the Conventus, in which the new licentiate advanced and defended an original thesis of law.

These developments stand in sharp contrast to those in northern Europe and England. As indicated previously, schools in the North were connected with the Church, and when the first fledgling universities were formed in the

twelfth century, they invariably fell under church control. Indeed, the northern universities were often a direct outgrowth of the most important intellectual force in the eleventh and twelfth centuries in France, Germany, and England, the cathedral schools. These centered around great teachers, who taught with the blessing of the local bishop. Although anyone at all could teach outside the cathedral, it became customary for instructors both within and outside church walls to obtain a license from the Chancellor, nominally the head teacher at the cathedral school, and himself a churchman.[5] The privileges of scholars in northern Europe was thus based on association with ecclesiastical authority; all students and masters were deemed clerks of the Church.

All this had important implications for the northern curriculum. Logic, philosophy, and especially theology, were the dominant subjects. While the university at Bologna, famous for the study of civil and canon law, became the model for institutions of higher education in Italy and southern France, Paris, noted for theology, became the model on which were patterned other new universities in northern Europe and Britain.

Papal policy preserved for Paris its dominance in theological education.[6] Civil law had been taught there during the twelfth century. In fact, Daniel of Morley, who visited Paris c. 1170-90, described law as "the most

prominent study of the place."[7] However, the popularity of the law faculty was not allowed to continue, for many of the most promising students were being drawn to the subject. Anxious to maintain Paris as the primary training ground for the Church's theologians, Pope Honorius III forbid the study of civil law there in 1219.[8]

Oxford, of course, was one of the schools built on the Parisian model.[9] Little is known with precision about its origins. Rashdall attributes its birth to a forced academic migration from Paris in 1167, a byproduct of the then raging dispute between Thomas Becket and King Henry II.[10] Apparently, in retaliation for the French Crown's giving shelter to Becket after his flight from England in the middle 1160s, Henry forbid English clerics from going to Paris to study. All clerks possessing "revenues" in England were to return within three months. These recalled students regrouped in Oxford, perhaps attracted to that city because of previously existing schools.

If this is indeed what happened, it is not surprising that Paris was used as an organizational model for the new center of learning. Communication between Oxford and Paris was close throughout the thirteenth century; developments in France, both constitutional and curricular, were faithfully followed across the Channel. Thus, the Oxford curriculum was very similar to the Parisian. However, some greater emphasis was placed on languages, and civil law was offered.

Civil law had, in fact, been taught in England previously. There is evidence of a law school at the cathedral in Lincoln in 1176.[11] St. Paul's in the late twelfth century could boast of a university-like curriculum which included instruction in law. These efforts must have continued for a while, for we know that Henry III (1216-1272) prohibited the teaching of law in the City of London in 1234.

Vacarius, a wandering scholar, is reported to have taught civil law at Oxford in 1147. Rashdall doubts this, arguing that this more probably occured toward the close of that century. Vacarius's Liber Pauperum, a compendium of the civil law, was an important part of the curriculum at Oxford by 1200. Several civil lawyers of importance taught at Oxford during the 1200s, including William of Drogheda, noted enough to have been quoted with favor by Bolognese doctors. In addition, the founding documents of several of the Oxford colleges made explicit reference to particular numbers of expected civil law scholars.[12] Thus, it is entirely possible that, had other things been equal, civil law would have become an important part of the English university curriculum.

However, other things were not equal. As we have seen, graduates of the law school at Bologna had many opportunities to use their new skills in the outside world. The rise of the Bologna school occured at the same time Roman civil law was being adopted, at the expense of the indigenous legal

system, in many Tuscan towns and other parts of the Italian peninsula and southern France. Eventually, Roman law was to become the almost universal basis for the European legal order. But, for a variety of reasons, Roman civil law never took root in England. Instead, the common law, primarily a product of Anglo-Saxon and Norman legal traditions, which today serves as the foundation of the law of the English-speaking nations, was able to establish itself. These developments had the most crucial implications for university legal studies in Britain.

The development of the British system of law was closely tied to that of the monarchy; legal history reflects the Crown's successful attempt to strengthen its independence of both feudal lords in the countryside and the papacy in Rome. As the kings of England established their political supremacy during the course of the twelfth and thirteenth centuries, so the law of their kingdom, too, became firmly established.

During this early period, however, other bodies of law were still quite influential. Most judges were men of the Church, and therefore schooled in canon law. Roman law, too, played a part, as judges would have been at least familiar with it. But England did not substitute Roman for native rules. Rather, in many cases, Roman procedures were adopted to enforce native law. The result was the creation of an independent system of English public

and private jurisprudence that began to diverge noticeably from that of continental nations.

The national judicial system first took recognizable shape under Henry I (1099-1135), and was immeasurably strengthened under Henry II. The widespread use of the jury, a systematic criminal procedure, and circuits of itinerant justices all appeared during the twelfth century. Judges were no longer all-purpose ecclesiastics; instead, they became specialized jurists whose primary loyalty ran to the Crown, for Henry was determined to impose his own lay law throughout the realm. Although litigation had been carried on without lawyers in Saxon and Norman England, the next century saw the establishment of the litigant's right to have counsel, an expert pleader who, for a fee, would present an entire case.

It is likely that anyone could appear on behalf of another at this time. By the reign of Edward I (1272-1307), however, the situation was beginning to change. The first Year Book reports a great deal of litigation being conducted by a small group of pleaders.[13] The law was becoming recognized as a distinct profession.

Previously, as we have said, most judges had been clerics, conversant in canon and civil law. In addition, many Englishmen travelled to Bologna to study civil law before beginning a practice back home. Now, however, it was increasingly likely that neither lawyer nor judge was

familiar with continental legal traditions. The bench was often recruited directly from the ranks of the pleaders. And more importantly for our purposes, this period sees the first official references to formal common law education in England.

Legal training consisted primarily, or perhaps exclusively, of apprenticeship experience during this era. A royal writ, issued by Edward I in 1292 refers to apprentices, and seeks to limit the number of such students "follow(ing) the Court and tak(ing) part in its business" to those who were "worthier and more promising".[14] Apprentices sat in the "crib", a special enclosed area in the courtrooms of the period. They were at liberty to interject comments and questions during the proceedings, and were apparently personally associated in at least a loose fashion with the judges who served in the King's courts.

Edward's writ of 1292 is important for several reasons. At a time when the monarchy was solidifying its power and expanding its court system, there was a clear need for more well-trained legal personnel. The writ indicates that the Crown was willing to rely on some sort of apprenticeship system, rather than the universities, for its future lawyers. Why?

Oxford, and later, Cambridge, which was in all material respects a copy of the first, were uninterested in the common law. Uncodified, a product of <u>ad hoc</u> judicial

decision-making, its proceedings conducted in the vernacular, native English law was entirely too "common" in every respect to warrant the attention of medieval scholars. In addition, as we have already seen, the English universities traditionally emphasized theological study. They were primarily institutions for the training of clerics, and as such, closely allied in spirit, if not more openly, with Rome, rather than the monarchy in Westminster.[15] Thus, their influence was cut off, the common law developed entirely as a body of judge-made principles, and it was the courts and their officers who exerted greatest control over English legal education.

In order to understand the early development of the apprenticeship training system, one must first grasp the essentials of the structure of the legal profession in England. Courtroom pleading was done in a special language, "law French."[16] A part of the new profession specialized in oral advocacy, standing beside and prompting the litigant. These thirteenth century pleaders were divided into two groups, each associated with particular courts in which they held exclusive rights to appear. Ordinary attorneys practiced all over the country, handling the initial pleading stages of lawsuits, as well as the vast amount of legal work that did not require judicial proceedings. Often, individuals who had large land holdings or commercial interests, or were for other reasons frequent litigants, would retain a single legal advisor who would, in turn, hire a staff of advocates.

Eventually,[17] the two classes of advocate merged; for reasons we shall learn, these men became known as "barristers". Lawyers who were not admitted as advocates became "solicitors". The differences in function and status between these two groups were to play an important role in the history of both the legal profession and legal education.

Aspiring barristers were trained in specialized schools by their colleagues. These schools were known as the Inns of Court. Part university, part hotel, part guild office, the four Inns of Court, Gray's Inn, Lincoln's Inn, Inner Temple, and Middle Temple, played a profound role in English life from the early 1400s until the Revolution.

As we have seen, students were traveling with judges during the late 1200s. However, during the next century, many of the important national courts were fixed at Westminster. Thus, it was natural for those employed by the courts to live with each other conveniently nearby, and for judicial trainees to join them. Too, because other courts were in session only at limited times during the year, these lawmen may have been joined by their brethren seeking temporary accomodation. Out of a varied group of hostals were born the four Inns of Court and a system of ten secondary Inns of Chancery.[18]

During this period, which begins around 1400 and extends at least 150 years, the Inns maintained a definite

collegiate character.[19] Their educational system was purely practical.[20] "Readings", or lectures, by senior advocates were followed by discussion and sham lawsuits, called "moots". Either a moot or a reading was held every evening after supper during the court term and vacations. During the term, students watched as senior advocates judged arguments by junior members of the Bar. The students recited pleadings which they were apparently required to memorize. During vacations, junior advocates acted as judges, and the students themselves were responsible for argument.

Lectures involved the discussion of a statutory text and the interpretation of doubtful points of law. Students contested the interpretations offered by the reader, or lecturer, who was required to defend his position.

After seven years at his Inn, the student was eligible to be called to the Bar of the House and enter the ranks of the Utter (or Outer) Barristers. After an additional three years, he would be allowed to practice publicly, although his education would not be considered complete until he had been an Utter Barrister for 10 to 12 more years. At that point, after giving a series of readings, the barrister might become a member of the Bench of the Inn, the Inn's governing body.

In addition to the members of the middle class and yeomanry who wished to enter the profession, the Inns increasingly attracted many sons of the lay nobility,

who needed a general knowledge of the common law to deal with property questions and local administrative and judicial matters. Typically, these students would spend some time studying arts or civil and canon law at Oxford or Cambridge before entering the Inns. Sir John Fortescue, writing around 1470, declared, "there is scarcely a man learned in the laws to be found in the realm who is not... sprung of noble lineage."[21]

This trend continued into the sixteenth century. Many of the Tudor elite were educated, at least in part, at one of the Inns. The four schools increasingly served as recruitment sources for Parliament and the growing civil service. In 1422, only 40 of 262 members of Parliament had been lawyers.[22] Of the 420 members of the Parliament of 1563, 108 had attended one of the Inns. In 1584, 164 members were Inn-educated, in 1593, 197.[23]

The world of the Inns was a far cry, in many respects, from that of the monks and schoolmen of Oxford and Cambridge. In addition to law, music and dancing were pursued. Fortescue had described how "all games proper for nobles, as those brought up in the King's household are accustomed to practice" were also taught.[24] Commenting upon the Inn curriculum after a visit to London at the beginning of the sixteenth century, Erasmus wrote, "the study of English law is as far removed as can be from true learning."[25] He went on to note, however, that "in

England those who succeed in it are highly thought of. And there is no better way to eminence there, for the nobility are mostly recruited from the law."[26]

The Inns were not only at the center of English political life. They were a focal point of London society, as well. The first performance of Twelfth Night was staged before Queen Elizabeth in the hall of Middle Temple.

The decline of the Inns as academic institutions is generally thought to date from the late sixteenth century. In fact, the decline probably began 100 years earlier. Fewer students were sufficiently motivated to devote themselves to rigorous and lengthy study. Indeed, students became notorious for irregular, and often violent, behavior. In addition, senior members of the Inns did not uphold their educational obligations. Moot exercises were increasingly neglected. Readings were either shortened or omitted entirely, and were often irrelevant to student needs, for they had become an important basis for selection to the bench or senior status positions within the profession. They were used for personal rather than pedagogic purposes, serving as opportunities to show off one's wit as much as one's erudition.

In every respect, Inn members found it tedious to train students when they could be doing something more profitable. Often, because of business opportunities elsewhere, barristers would have to be bribed to serve as readers. Many found it more convenient to pay a fine

than to serve. Calls for greater order were issued frequently by Inn Benchers and judges, but they failed to arrest the general decline.

The introduction of printed books played an important part in these changes. Textbooks allowed students to obtain knowledge on their own, and many preferred to read than to listen to lectures. The barristers themselves may have encouraged this trend, for the publication of their readings provided a welcome source of additional income.

The Inn system collapsed completely during the Rebellion, and was never really revived, despite a number of attempts during the Commonwealth and after the Restoration. Neither the legal profession nor the monarchy wished to supervise legal education closely. The Inns were left to go their own way; disorder became common within the halls themselves, residence rules were often broken, and the collegiate character of the Inns was lost entirely. The obligation of the student to reside and study became a mere fiction. In addition, beginning in 1668, the Crown was able to appoint Inn Benchers directly, thus undermining the Inns' independence. By the eighteenth century, the Inns were used as clubs by politicians and literary men, as well as lawyers. Serious law students, although required to eat a certain number of meals at their Inn, made private tutorial arrangements with interested practitioners. Admission to the bar, however, was purely a matter of birth and money.

Before leaving the Inns of Court of this period to review developments in the other branch of the profession and the universities, it is fitting to note the many achievements of the Inns. Although their training was practical, one must remember that, by the sixteenth century, many of their students had already studied at the university level before enrolling. They served as a vehicle for upwardly mobile young men, at a time when the two British universities were totally uninterested in such a role. Finally, the victory of the common law in England has in part been attributed to the strength of the Inns. Their independence and self-government, their numerous public activities and civic involvement, and of course, the excellent professional training they gave were all factors in English legal development.

The second branch of the legal profession never established a guild-like organization or institutionalized training. In medieval times, many solicitors belonged to one of the subsidiary Inns of Chancery, which were responsible for training prospective members of the profession. These, however, soon disappeared. Further, as the functional distinction between solicitor and barrister hardened in the sixteenth century, the Inns of Court refused solicitors entry. Unorganized, not subject to direct court control, solicitor training remained very much a hit-and-miss affair. During the seventeeth century, judges began to require

some showing of qualification. Solicitors were required to demonstrate that they had engaged in some legally-related occupation for a specified period, thus ensuring that they had at least received a modicum of practical experience. A period of apprenticeship, or "articles" fulfilled this requirement.

Oxford and Cambridge continued to teach civil law during this period, for this subject was still more acceptable to the humanists of the universities than the common law. A branch of the law of Christian Europe, civil law texts, commentary, and judicial decisions appeared in Latin. In addition, to the academic mind, civil law seemed more systematic and orderly than the common law. However, it still held a relatively minor place in the curriculum. During the 1500s, the two schools awarded an average of four B.C.L. degrees, and perhaps one or two D.C.L. degrees, annually.[27] Virtually all fellowships were reserved for divinity students; at Oxford, only New College, All Souls' and St. John's, and at Cambridge, only Trinity Hall offered significant aid to students of civil law.

The sixteenth and seventeenth century course in civil law required attendance at lectures and the performance of disputations. The Corpus Juris Civilis served as the general text. Students might begin the course as soon as they matriculated, in which case they had to attend lectures for five (Oxford) or six (Cambridge) years, or take an

arts degree first. In that instance, only three or four years were required. Doctoral candidates had to attend for an additional four to five years, and also present lectures.

The 1500s were a crucial period for the common law. During this century, the emergence of the modern nation-state on the Continent was accompanied by the widespread replacement of customary medieval rules by classical Roman law. In several countries, this change represented the culmination of a 200-300 year transition. In England, serious consideration was given in some circles to discarding the haphazard common law in favor of the Corpus Juris Civilis. Court business was declining; complaints about procedural technicalities as well as substantive rules were becoming more frequent. Too, as in the rest of Europe, it was thought that a centralized administrative state required a proper legal code.

The establishment of Regius Professorships in civil law at both Oxford and Cambridge by Henry VIII was one manifestation of this increased interest. Edward VI also attempted to provide for the training of needed civilians calling for the creation of special colleges for the study of civil law at the two universities. This plea was frustrated, however, by academics wishing to maintain the status quo.

Civil law never developed as a real alternative to the common law. While men trained in the civil law were often chosen for ambassadorial and other international legal

roles, and certain English courts, including Admiralty, followed civil law procedure, the universities continued to remain outside the mainstream of legal education. Certainly, the strong professional organization of the common lawyers and the educational system of the Inns were factors in this. Too, the practical difficulties of instituting an entirely new legal system cannot be over-emphasized. However, perhaps the most satisfactory reason for these events is an economic and political one, for the landed classes which dominated Tudor society could never have agreed to any inteference with the complicated system that assured their rights and wealth.

The first steps toward the creation of the modern system of English legal education began in the middle of the eighteenth century. Although some of this activity was aimed at lawyers generally, much of it was directed at one or the other of the two branches of the profession.

A first step was taken during the early 1700s. A series of Parliamentary Acts, in 1729, 1749, and 1750, the first official legislative recognition of the typical training experience in the junior branch, required that every prospective solicitor be "articled" for a period of five years before admission. Until the 1830s, this period of apprenticeship was the sole substantive requirement for admission to solicitors' ranks.[28]

Even less was required of potential barristers. Although it had become common practice to read in an attorney's or

barrister's office, this was never institutionalized. The four Inns of Court still regulated admission to the Bar, but the only formal requirement of students was that they eat a certain number of dinners at their Inn over the course of several court terms.

This situation was balanced in part by the fact that most barristers of the eighteenth century were university educated. However, there was no sense of any functional relationship between such general education and the practice of law, no suggestion ever made that general knowledge might be related to professional competence. Barristers were supposed to be gentlemen, and as such, were expected to profit from broad training. Indeed, the same social and economic factors that made it possible to enter the Inns also made possible a university education. Very often, loose attendance requirements allowed students to enroll in both simultaneously.

The period 1825-1875 was one of great legal reform. A series of Parliamentary Commissions and legislative acts revamped the entire court system and its procedural rules. These reform tendencies were also directed at professional training methods. Initial activity was limited, however, to inquiry and recommendation.

The Parliamentary Commission of 1834 considered the admission of students to the Inns of Court. It described the power of Inn officials to admit prospective barristers

as "uncontrolled and irresponsible."[29] In 1846, the Select Committee on Legal Education, investigating the education and training of barristers, was sharply critical of the lack of training afforded students. It stated that legal education in England presented a "striking contrast and inferiority" to such training "at present in operation in all the more civilized States of Europe and America."[30] The Committee proposed a public qualifying examination for admission to the Inns, mandatory lecture attendance, and the formation of a consolidated College of Law for barrister training.[31] An 1854 Commission of Inquiry into the Inns of Court again called for the creation of a single legal university; this school would both train prospective professionals and educate the public at large. An entrance exam for non-university graduates, compulsory lectures, a required term of apprenticeship, and a final Bar examination were also recommended. The vocal opposition of at least two of the Inns, coupled with the considerable political power of the Bar, thwarted this attempt.[32]

A theme often sounded during this period was that of consolidated training for barristers and solicitors. Solicitors, anxious to strengthen their professional identity and increase their prestige, supported such proposals vigorously. Of course, the Bar was often much less enthusiastic. Proposals to create a legal university in London, perhaps as part of the University of London,

appeared and reappeared during the last third of the nineteenth century, but the necessary agreement of all four Inns was never obtained. In the meantime, the solicitors' Law Society[33] developed its own series of lecture classes, given in London and provincial cities, in the seventies.[34]

Every scheme for expanded education in the nineteenth century met with opposition from the Inns. By and large, leaders of the Bar were well established, very influential, and totally without reason to change the status quo. It was feared that any development that might lead to joint study by students in both branches of the profession would reduce the Bar's prestige.

The most important changes that did occur in the nineteenth century occured in higher education. Oxford and Cambridge had been the only two universities in Britain for centuries. Dominated by the Church of England,[35] their students overwhelmingly came from a gentry, clergy, or military background.[36] Classics formed the major portion of their curriculum; professional education in areas like law, medicine, and engineering was not offered. All this was to change in the 1800s. New universities emphasizing professional study and technical subjects were established. And, in the face of the remarkable social changes of the nineteenth century, Oxford and Cambridge began to change, too. Since, with few exceptions, leading judges and members of the Bar were Oxbridge graduates, it was not unexpected that

those within the profession hoping to reform legal education looked to the two universities. Let us therefore first consider their evolution.

In 1753, William Blackstone, today considered perhaps the greatest of the English legal commentators, had been appointed lecturer in law at Oxford. This event marked the first time that either of the universities had offered a course in the common law. Five years later, the Vinerian professorship of law was created at Oxford for Blackstone; he held this chair for a number of years, leaving in 1766 only after his efforts to establish common law as a proper subject of university study had clearly failed.[37] Blackstone's initial lecture argued that universally essential knowledge was best taught in the universities. "I think it an undeniable position that a competent knowledge of the laws of that society in which we live is the proper accomplishment of every gentleman and scholar; a highly useful, I had almost said essential, part of liberal and polite education."[38] In addition, Blackstone was concerned with the quality-or lack of quality-of professional training. The interpretation and enforcement of the law was much too important to be left to "obscure or illiterate men."

Blackstone's efforts were ahead of his time. He attracted few students, and after his departure, the Vinerian chair was treated as a sinecure and filled by nonentities. Thus, the situation remained fundamentally

unchanged until the middle of the next century.

The 1846 Select Committee had placed considerable emphasis on the establishment of law as an academic discipline. While final training was to be left to practitioners, it was thought desirable for academic lawyers to first give students a solid grounding in legal theory and philosophy. However, a Royal Commission established in 1850 to report on the state of education at Oxford and Cambridge found that nothing had been done. Again, a call for the expansion of university training in law was made.

Some action was taken. At Oxford, a School of Law and History was established in 1850;[39] at Cambridge, a Board of Legal Studies was founded in 1854. However, these early programs failed to attract good students. A new effort was begun in the seventies. More substantial men began to fill the Vinerian Chair. Sir Henry Maine was named to Oxford's new Corpus Professorship of Jurisprudence. In 1871, the Honours School of Jurisprudence was founded at Oxford; in 1873, the Law Tripos was inaugurated as an independent course of study at Cambridge. Faced with continual opposition from more established faculties to "trade school subjects", the new programs continued to emphasize legal history, Roman law, and jurisprudence.

Despite everything, few high calibre students were attracted to legal studies. Reading classics was still considered the best sort of training for an aristocratic

life. Too, because the profession did not think university study of any direct utility, few would-be practitioners were motivated to enroll. Bright young men were encouraged to study a more traditional subject in school and then go into the profession.

Neither did the role of law professor become firmly established. The teachers themselves doubted whether their position was legitimate. In some sense, they were caught between traditionalists in the profession, who had no use for academic law, and their own colleagues on other faculties, who frowned on "vocational" subjects.

Unlike Oxford and Cambridge, which had resisted the intrusion of common law studies for hundreds of years, many of the new universities being founded in the nineteenth century taught law from the outset. University College in London, established in 1828, led the way in this regard. A second chair in law was created at King's College, London, in 1831. When the University of London became an examining university in 1858, permitting students studying throughout the country to earn a London degree, the opportunity to study law was significantly widened.

Other civic university colleges followed London's example. In many cases, full-time academic legal study grew out of night classes organized by solicitors for articled clerks. Early law faculties were often dependent for financing on the local, and later, the national Law

Society. This did little for either the self-respect of the new law instructors or the esteem with which they were regarded by other academics and the legal profession. However, by the end of the century, the study of law was secure at London, Manchester, Birmingham, Liverpool, and Leeds. At least five other law faculties were established between 1900 and 1911.

The turn of the century also saw reconsideration of the idea that a professional law school for both prospective barristers and solicitors be established in London. Yet another Royal Commission had been appointed to study the University of London in 1909. Drawing a contrast with much of the legal education of the day, the Commission's report emphasized the broad nature of legal study. It stated that the existing law of England, not just jurisprudence, legal history, or international law, could be taught as a scientific, academic discipline:

> We have no doubt that law as a whole, including the law of England as it stands today, is a department of learning which ought to be included within the scope of a university. The most scientific study of it which a university can provide will be the best foundation for professional work, and will alone fit a man to deal with intellectual freedom, and from a wide point of view, with the questions he will have to answer from day to day in his professional practice.[40]

The Commission further believed that the law faculty ought to remain separate from the rest of the profession. This was not then the case in most of the civic colleges and universities. The Commission report represents the

high-water mark of the reformers' efforts to establish joint academic training at the professional level. Its views on the role of university training and the law faculty were clearly not shared in either professional or academic circles.

The Law Society, forced to go on its own, had established its School of Law in London in 1903. Although attendance was not required, it gained some measure of academic respectability. In 1922, the Solicitors' Act made a single year of attendance at an approved law school compulsory. Provincial law schools grew to meet this demand. The Society promoted cooperation between local law societies and area colleges and universities, and began to formally subsidize the educational programs that were developed. Because the Society was paying for much of it, the legal education thus provided by the universities, taught most often by local practitioners, was narrow in scope, and oriented toward the national solicitors' examination.

Thus was established the general pattern of legal training for the next 50 years. Although law was finally a part of the university curriculum, one might fairly say that it was "in the university, but not of it". The quality of education offered by local institutions was limited, provincial university law faculties were thought inferior by both academics and legal professionals, and the two great universities which had dominated the country's

system of higher education for so long were unable to develop programs that could attract superior students.

Legal education in Great Britain has never achieved the status it has in this country. Although university graduates gain certain exemptions in the rather complicated qualifying processes for barrister or solicitor status, and indeed, most modern British lawyers hold a university degree,[41] university training is clearly not required of prospective professionals.[42] For the most part, law is taught in a technical fashion on the baccalaureate level. Most law students in England study in local polytechnics.[43] Only very recently has law emerged as a recognized part of a liberal education, and have law faculty members begun to gain the prestige of their colleagues in other university departments. In contrast, law in the United States is a subject of graduate study, and many law schools have historically served as the "flagship" of their university, attacting students, public attention, and academic prestige to the entire campus.

Why did law fail to gain a secure position in the British university until the twentieth century, and why is its position today so clearly inferior to the one it enjoys in the United States? We shall spend a good deal of time tracing the early development of American legal education in the next section, but this is an appropriate moment to pause and consider the meaning of the British experience.

The rapidly expanding industrial and commercial base of the nineteenth century demanded more service professionals of every kind; naturally, the era was one of accelerating opportunities for lawyers. In addition, as social mobility increased, many more children of the middle and lower-middle classes viewed law as an important means of social advancement. Some institutional means of systematically meeting the demands created by these changing conditions was required.

But none were available. Clearly, the singular nature of the British class system, which affected the structure of both the legal profession and the universities, had much to do with this. Let us first look at the lawyers' response.

At one time, in the case of the Bar, the Inns of Court had provided training for relatively many students. But they had been, by and large, institutions for the wealthy, and in any event, had never really re-established themselves after the political disruptions of the seventeenth century. Further, the solicitors' branch of the profession had never gone beyond apprenticeship training, and the apprenticeship method was totally inadequate to meet modern demands, given its notoriously uneven quality and inability to train large numbers of students. A legal university, sponsored by both solicitors and barristers, might have provided a solution, but plans for such an institution never

won the support of the rigidly conservative Bar. A profession certain of the value of university legal education and united on that issue would surely have acted in a different fashion.

At first, the universities were even less responsive. Oxford and Cambridge, for centuries the only two universities in the country, were essentially content to serve as finishing schools for the sons of the elite. As such, they felt no need to expand their curricula in the direction of professional subjects. In the 1750s, Blackstone's pleas on this subject fell on deaf ears. Joseph Priestly had written in 1764 that, "It seems to be a defect in our present system of public education that a proper course of studies is not provided for gentlemen who are designed to fill the principal stations of active life."[44] The same thing could have been said 100 years later. Even after the admission of dissenters, the two universities retained a distinct Anglican bias. Strong only in the classics, their faculties were out of step with the intellectual trends of the day.

Thus, as England entered the industrial age, it did so with an inadequate system of higher education. Most Englishmen were aware of this; the examples of the nineteenth century Scottish, German, and American universities did not go unremarked. It was clear to many that the English system had to allow middle class students greater accessibility, provide better technical instruction, recognize

modern subjects as legitimate areas of study, and place greater emphasis on pure and applied research. Germany and the United States were making rapid technological and scientific advances; in order to meet increased competition from these quarters, educational change was mandatory.

The response was the establishment of new civic universities. The University of London was the first; its University College was founded in 1828. Many others were begun in the years 1850-1900. Typically, the new schools received much of their financial support from local commercial and industrial interests, who realized that new universities could provide the skilled managers and technical workers they needed. Thus, the new curricula emphasized the subjects that Oxford and Cambridge did not, and it was the new civic universities that attempted to provide the institutionalized legal training the country required.

That law has not until recently threatened to become a prestigious subject in the new universities must be attributed to several factors. The new schools themselves often lacked academic credibility in the eyes of status-conscious legal professionals and Oxbridge dons. On the whole, law was not taught very well, either. Few students of calibre could be drawn to a subject presented in narrow, technical terms. Finally, the new law faculties failed to establish an independent professional identity; instructors were often part-time practitioners, uninterested in abstract

learning, unrespected by colleagues in academic or professional life.[46]

In conclusion, then, considerations of class have hindered the progress of English university legal education in several ways. Oxford and Cambridge for centuries refused to incorporate common law into their programs. When social changes in the nineteenth century made some form of university training mandatory, the bifurcation of the legal profession prevented it from achieving any consensus about the value of university education. This doomed attempts to create a single legal university, and made it impossible for elite schools like Oxford and Cambridge, once they did begin to teach law in a meaningful fashion, to attract the very best students. Further, it made precarious the position of those lawyers who chose academic careers, rendering it unlikely that the finest minds in the profession would be interested in university teaching. Status distinctions in higher education meant that many of the new civic colleges teaching law in the nineteenth century would be forever considered "inferior" to Oxbridge. As these schools were often associated with technical studies, so would law be identified as a technical subject. Thus, law was relegated to the second ranks, a lesser subject taught inadequately to lesser students.

With the English outcome in mind, let us consider the

development of legal education in a nation that can at least boast of a more egalitarian tradition, the United States.

It is not surprising that legal education in the colonial United States was much like its eighteenth century English counterpart. A unified, professional bar had established itself in all major seaboard communities by 1750.[47] While a few prospective lawyers, most of whom came from Virginia and the South, travelled to England in order to attend one of the Inns of Court, the overwhelming majority learned their trade in a well-established system of apprenticeship training.[48]

Perhaps the most important difference between the English and early American situation was the relatively healthy condition of higher education on this side of the Atlantic. A number of liberal arts colleges initiated programs in law in the years immediately following the Revolution. Often, administrators viewed the association with one of the learned professions as a means of defending their institutions from legislative and other attacks concerning the elitist, impractical nature of a liberal arts education. Courses in law might also serve to gain the future support of the already-influential legal profession. These were themes that were to be repeated throughout the nineteenth century.

Many of the early experiments in university legal education were motivated by Blackstone's Oxonian example. Blackstone had argued that law was an important part of every citizen's education. In writing in 1777 of a projected

professorship in law at Yale, university President Ezra Stiles stated:

> The professorship of Law is equally important with that of medicine; not indeed towards educating Lawyers or Barristers, but for forming Civilians... Most certainly it is worthy of great attention the Discipline and Education of these in that knowledge which qualify them to become useful members of Society...[49]

Similarly, James Kent's lectures at Columbia, begun in 1794, were "not designed primarily for professional students."[50] Other law programs were established at Jefferson's William and Mary in 1779, the College of Philadelphia in 1790, and Transylvania University in Lexington, Kentucky, in 1799.

Most of these early professorships were soon abandoned, however. Students were uninterested in cultivating civic virtue, and more inclined toward the kind of practical instruction that would meet their career needs in a more immediate fashion. Certainly, there was little motivation to study law in college if one had to serve a lengthy apprenticeship anyway. It was the private law school that provided the model that later, more successful, college-affiliated law schools were to follow.[51]

In the late 1700s and early 1800s, a few lawyers who enjoyed teaching began practicing less and less, spending increasing amounts of time with their clerks. As certain lawyers took on many apprentices, the first law schools in this country evolved out of such specialized law offices.[52]

The earliest and most famous of the private law schools was the one in Litchfield, Connecticut, founded in 1784. It served as the model for similar schools in at least 15 states. Open for nearly 50 years, its attendance varied from nine to a peak of 55 in 1813. The curriculum was, of course, purely practical. The full Litchfield course lasted 14 months; in this time students attended both lectures and moot court exercises.

Litchfield and schools like it bridged the gap that existed between students needing sound, systematic instruction, and universities unwilling to present purely practical law courses. There was certainly much dissatisfaction, among students and practitioners alike, with the system of apprenticeship training. The quality of such education was notoriously poor. Most student time was spent copying documents; dry treatises were read in spare moments. Entrepreneurial-minded professionals argued for greater structure and standardization. A growing number believed that a regular system of training would establish professional authority and status in the eyes of the public. In their view, law was a science; a period of clerkship was inadequate for instructing students in either the general principles of law or the new, important fields of commercial law. Only in a special educational environment could an abstract body of theory, complex enough to support lawyers' claims to a unique competence, be developed. Thus, law schools

were viewed as a progressive alternative to the apprenticeship system. On the other hand, most practicing lawyers had themselves trained as apprentices, and felt that such experience was necessary. In addition, apprenticeship training left control over admission to the Bar directly in the profession's hands. For lawyers concerned about increasing competition, this was an important consideration.

Now competing to fill seats, university law programs began to follow the pattern of the private schools. Often, a local private school was simply taken over in order to create a functioning law program.[53] By 1848, there were 15 college-associated law schools.[54] In all, law was taught as a practical subject; most relied on their own students' tuition for full financial support, and were, at least in that sense, on the periphery of the university.[55]

Then as now, Harvard Law School served as the exemplar of certain general trends. Its establishment in 1817 was facilitated by the influence of attorneys at the highest levels of the university administration. That Harvard had previously gone without a law school was in part due to the school's reluctance to become involved with a "vocational" subject. However, by 1815, lawyers were a majority of the fellows of the Harvard Corporation, and held 4/5 of the seats alloted for laymen on the Board of Overseers. University attitudes changed predictably. In addition, the profession was instrumental in having a lawyer, Josiah Quincy, appointed

as Harvard's first non-clerical president, and Quincy, in turn, was a primary participant in the law school's later revitalization in the 1830s. Finally, a major gift from Nathan Dane, the author of one of the most successful law books of the day, endowed the chair in law that attracted Joseph Story to the school.[56]

Under Story's leadership Harvard became the most influential law school in the country.[57] Even so, its curriculum stressed basic common law; politics, the study of government, and consideration of legislative action was put to one side. Friedman concludes that apprenticeship training influenced Harvard more than Harvard influenced apprenticeship.[58] Surely, much the same thing could be said about other university law schools. At least one commentator has stated that the character of American university legal education was shaped for generations by this. The Story-Harvard model was not seriously challenged until the 1920s, when the movement to integrate law and the other social studies began.[59] In general, one may conclude that university legal education in the first half of the nineteenth century did not amount to much more than expanded office training.[60]

A major barrier to the further development of university law studies was the great Jacksonian wave of the 1830s. During this period, apprenticeship and other bar requirements were weakened or abolished in many states. Local bar

associations, responsible for the enforcement of such rules, often disbanded. The demand that society be more egalitarian was heard everywhere; the institutions created by the legal profession to further differentiation and increase occupational status were often nipped in the bud, encountering lay resentment directed at specialization, elitism, and legal technicalities.

It was not until the post-civil war period that American legal education became an integral part of higher education in this country. Why did the university model of legal training become predominant in this period? The answer to this question is closely related to the development of the legal profession and the growth of the American university in the years 1865-1900. Changes in the nature of legal practice and shifts in the intellectual framework of the academy led to fundamental changes in legal training. By the early decades of the twentieth century, our present system of legal education was in place, a result of piecemeal adjustment to these forces.[61]

A particular conception of the American university emerged during the last third of the nineteenth century. It emphasized three ideas: practical public service, the value of abstract, scientific research, and the diffusion of cultural standards throughout the general population. Each of these ideas, in combination with changes in the organization of the legal profession, helped to bring

legal training inside the university classroom.

Academic leaders, primarily concerned with protecting the liberal arts tradition and the ideal of the university, helped to establish the tradition of college-sponsored legal training. Such sponsorship served a dual purpose. First, it helped to defend the university from attack by members of the community who believed that the liberal arts did not offer the kind of practical education that was required in rapidly changing times. Such attacks might come from the general public or, if the institution were not private, from a sceptical state legislature. Second, association with a law school permitted the university to align itself with a powerful professional group. Political leaders who were themselves lawyers would look with favor on an institution involved in legal education. In addition, law school graduates would themselves one day be influential members of the social structure, and could be expected to support their alma mater.

University presidents played a crucial role in this regard. Throughout this period, administrators were becoming, at the expense of faculty members and trustees, the real centers of power in higher education. A strong presidency required a politically able bureaucrat responsible for overall institutional management and outside public relations. The president had to be able to contend with alumni, politicians, the general public, competing institutions, and faculty

and students simultaneously. Such positions were bound to attract active men who themselves subscribed to the idea that the university should emphasize practical subjects and public service.

Indeed, West of the Alleghenies, utilitarians were in firm control. Academic excellence and broad accessibility were not thought incompatible. The "Wisconsin idea", that the university was an organic part of the state, was put into practice in many places. Social utility became the yardstick by which newer curricula, including business administration, engineering, and physical education, as well as law, were judged.

In the East, too, advocates of practical studies frequently became leaders in higher education. Charles W. Eliot of Harvard was one of these men; a product of the new mercantile aristocracy, he was a firm believer in university professional training.[62] During his 40 year tenure in the Harvard presidency, he was considered a model by administrators of a similar mind elsewhere.

In addition to the desire for a practical curriculum, competition between institutions motivated academic leaders to expand subject offerings. University presidents felt obliged to match the programs offered by neighboring schools in order to maintain institutional prestige. Too, there were seats to fill, and a public with little enthusiasm for the esoteric had to be encouraged if enrollments were to increase.

At the same time universities were becoming much more willing to accept law schools in their midst, lawyers began to attach greater significance to university-centered legal training. During the pre-war period, most lawyers had been indifferent to the success or failure of the few law schools that did exist. Such schools did not serve any important professional purpose. At best, they provided a useful supplement to apprenticeship training. Bar admission depended on the sponsorship of established lawyers. This support was won on the basis of personal relationships, not formal educational requirements.

Professional life, too, was regulated without recourse to formal admission requirements or disciplinary mechanisms. Discipline was maintained, and professional ability measured, through the social life of the judicial circuit. The Bar was as much a gentlemen's sporting club as a professional organization; professional norms were enforced through social pressures.

However, as America moved from a rural, small-town society to an industrialized, urban one, the judicial circuit declined, and the transition to a more formally regulated Bar began. As cities grew, successful lawyers more frequently practiced in a single location. New means of professional regulation were required. The establishment of local bar associations in the middle decades of the century reflects the pace of the changes in social and professional structure.

Apprenticeship had been the principal mode of training in the first half of the century, but institutional changes were making such experience more problematic. Increasing numbers of students wishing to enter the profession meant overcrowded law offices and difficulty in finding suitable apprenticeship opportunities. In addition, the nature of legal practice was changing dramatically.

Office counseling was replacing courtroom advocacy as the primary professional activity. Lawyers were less likely to be general practitioners priding themselves on courtroom skills than protectors of emergent corporate interests. Previously hired only when a client needed immediate assistance, they were now, to an increasing extent, retained on a long-term basis, and expected to give the kind of advice that would keep their clients out of court.

The growing complexity of American law accelerated the movement away from office training. Lawyers were becoming specialists; no apprentice could hope to gain even passing familiarity with all the branches of the law working in a single office. And while apprenticeship had always been a notoriously inefficient means of transmitting knowledge, successful lawyers were now even less able to guide their charges through the complexities of legal problems. Schools, preferably ones with specialized, expert faculty members, were clearly better suited for teaching detailed, technical subject matter.

Thus, one of the goals of the emerging American university, that of utility, in combination with fundamental structural changes in the legal profession, made university legal education a reality. In 1860, there had been a total of approximately 1200 law students in the United States. Thirty years later, there were over 4500.[63] During this same period, law schools increased in number from 21 to 61.[64] By 1900, there were 102, located in 33 of the 46 states.[65] These numbers do not tell the entire story, however, for students at the close of the century were involved in an entirely different sort of classroom experience than those of the previous generation.

The same university presidents who brought legal education into the university under the watchword of utility helped to change the law school curriculum in the name of science. Many of these men had been educated in Europe and were trained in the values of research. Their power was thrown directly behind those who argued that one of the fundamental purposes of higher education was pure research, that an emphasis on science assured academic respectability, and that American universities should emulate the German scientific model.

Law schools were expected to conform to this institutional ideology. Those who argued that law was a science and that it ought to be taught as such were given full administrative support. A scientific law school could not help but enhance

an institution's reputation, locally and nationally.

Many practicing lawyers also supported the notion that law was a science. We have seen that this idea had been articulated in the earlier years of the century. The profession had recovered from the dislocations of the Jacksonian era and the Civil War, and was ready again to assert claims to a unique competence. Professional prestige required that law be viewed as a body of knowledge and special skills above and beyond petty politics or debate. If rigorous, formal training were required to become a lawyer, the profession's monopoly on practice was justified, and an ever-increasing flow of income could be preserved.

It is only in this context that one can understand the rapid acceptance of the case method of legal education. Introduced by Christopher Langdell at Harvard in 1870, it overcame great initial resistance to become the dominant mode of legal instruction by the first World War. Indeed, in somewhat revised and softened form, it remains the single most important methodology in legal education today.

Langdell's ideas were relatively simple. He believed it possible to take any branch of law, identify its essentials, and select, classify, and arrange the written case decisions which had contributed significantly to the development of such essentials. Cases-more specifically, appellate cases-were the primary sources of the legal scientist, for they traced the slow, but certain, development over

the centuries of the very limited number of essential common law doctrines. The proper focus of legal training, therefore, was on abstract methods of legal reasoning, not particular legal incongruities or subject areas. It was the student's task to identify fundamental principles and apply them to the factual circumstances at hand.

With this approach, Langdell introduced casebooks into the law school curriculum. These were collections of reported decisions, selected and arranged to highlight the development of specific legal principles. They contained no commentary or explanation, no statutory materials. Classroom atmosphere was thus altered dramatically. No longer did the instructor lecture on "the law"; he became a Socratic guide, illuminating the fundamental concepts embodied in successive cases.

The initial reaction to Langdell's approach was extremely adverse. Virtually every student cut his classes; his colleagues on the faculty ignored his advice and continued to teach in the traditional fashion. But Langdell had a powerful ally: Harvard President Eliot. It had only been with Eliot's active support that Langdell was elected to the Dane law chair in 1870; it was Eliot who, later that same year, named Langdell the law school's first dean.[66] Much of Langdell's eventual success can be attributed to the unyielding support he received from the university administration in the first difficult years.

In addition to changing the law school curriculum, Langdell transformed the role of the law faculty member. Previously, faculty members had typically been retired practitioners or judges who wished to remain at least partly active in the profession. But the case method meant that academically-oriented instructors had to devote their full time to the job of teaching. In 1873, three years after coming to Harvard, Langdell hired one of his original students, James Barr Adams, to teach at the law school. This was unprecedented. Although no one could question Adams' intelligence, he had never practiced,[67] and his appointment brought outspoken opposition from both law school and university faculty members. Eliot backed Langdell against all critics, and Langdell carried the day, establishing a pattern for other law school faculties to follow. Thus, a new career, that of the full-time law professor, was established.

Given the intellectual atmosphere in higher education and the legal profession, one can understand how Langdell's ideas were able to spread quickly, Casebooks in many subject areas were published, and his teaching method was adopted in other schools. In some instances, Langdell's own students spread the gospel, for once Adams had been hired, other young graduates were able to find law teaching positions. Too, administrators elsewhere, imbued with the scientific ideal, and supported by sympathetic local bar

groups, exerted pressure to follow the lead of the prestigious law schools. "Scientific" law schools were thus drawn more closely into the university community.

The growing complexity of American law accelerated the acceptance of case study, for case study replaced content with method. Instead of unduly lengthening the course of study, it permitted law schools to concentrate on theory, allowing students to pick up practical details in their first years of practice. In an increasingly complicated, unpredictable world, lawyers were better off acquiring a general method of analysis, rather than specific knowledge. Only in this way could the study of law remain manageable.

Although the case method was advertised as scientific,[68] it did little to change the fundamental intellectual orientation of the law schools. Since Story's time, their curricula emphasized the practical aspects of legal training, and presented those aspects in a rather desultory fashion. Although the case system was not practical, in that it did not train students in counseling or litigation skills, and gave them no contact at all with statutory law, it was not particularly intellectual either. It permitted no contact with other disciplines; Langdell had eliminated any course in the Harvard curriculum that smacked of political science or economics. Neither did it attempt to present a broad overview of the law. Its teaching methods were best suited for only the brightest students. Thus, for most,

the law school experience remained an unstimulating, uninspiring one.

We have seen how the dominant educational values of utility and science, in conjunction with parallel changes within the legal profession, operated to significantly increase the numbers of university-affiliated law schools, and to transform the law school curriculum in the last half of the nineteenth century. The third idea underlying higher education's conception of the American university during this period, the general diffusion of cultural standards, also changed legal education in this country. However, in this instance, university values were at least initially at odds with those of the profession.

The pre-Civil War college had been the preserve of the upper class. Most of its students were drawn from the gentry; few working Americans thought a college education of much value. Enrollments at the largest schools were measured in the hundreds.

This, too, began to change after the war. Individuals increasingly viewed an academic degree as an opportunity to gain prestigious positions and higher income. The last decades of the nineteenth century were a period of expanding industrial and commercial opportunity for the middle classes. The United States was in the process of becoming a twentieth century industrial giant. In this regard, at least, American universities were in the same position as their British

counterparts. They served a clear social purpose, training new leaders and making possible upward social mobility for millions.

The institution-building university presidents were ideological spokesmen for the rising American middle class. The universities became a vital part of the emerging culture of professionalism, and were generously supported by the new industrial aristocracy. In addition, the universities also served a second major population group. The years 1870-1914 were ones of unprecedented immigration into the United States. Millions from central, southern and eastern Europe sought new lives in this country. Universities, especially those in urban areas, were an important means of making dreams of opportunity a reality.

For many citizens of the lower and middle classes, a legal career was a significant upward step, in terms of status and income. But it would be impossible to take this path if law schools remained relatively exclusive, expensive places. Thus, there was a need for a different kind of institution, one which would be accessible to working Americans who could not afford to leave their jobs to go to school or pay much tuition.

The answer was the night law school. The first part-time law schools holding classes in the early evening hours had been established in the sixties. In 1889-90, there were still only nine night institutions and one school holding both day and night sessions, compared with 51 day schools.

By 1916, however, there were 43 night law schools, and 21 which held both day and night classes. These represented 46% of all law schools in the country.[69] Many lacked university affiliation[70] or reasonable admission or curriculum requirements.

One result of this development was the creation of an unacknowledged, but very real, hierarchy among law schools. At the top were the older, private, Eastern schools. Next came some of the more prestigious midwestern institutions. Descending the ladder, one encountered the less expensive state schools and, finally, the night and proprietary law schools. These distinctions were not made entirely on the basis of status, for it was obvious that the variation in quality of legal instruction was quite great. The need to maintain a minimum level of academic respectability was one countervailing tendency that weakened the universities' desire to serve as many students as possible. Proponents of more stringent academic standards were also found within the profession.

Here, two quite distinct factors were involved. As the nature of legal practice had changed, professional solidarity and discipline could no longer be maintained informally. Local bar associations were required to regulate professional conduct. Further, no longer could the new lawyer be allowed to wait until after admission to prove himself. Objective, impersonal means of professional certification had to replace older, more personal ones. More rigorous admissions requirements for the Bar and

the law schools were necessary.

Secondly, the profession viewed academic selectivity as an efficient means of controlling economic competition and keeping new immigrant classes out of the profession. The proportion of new lawyers born abroad or of foreign parentage increased, especially as the profession moved into the first two decades of the twentieth century. This influx was perceived as a distinct threat to traditional, Anglo-Saxon professional values. "Tenement dwellers from Manhattan's Lower East Side were not permitted to usurp the places reserved for Kentuckians who studied Blackstone by candlelight."[71] "Ethical considerations" were often cited to disguise this ethnic bias. For example, in 1915, Dean Harry S. Richards of the Wisconsin Law School stated:

> If you examine the class rolls of the night schools in our great cities, you will encounter a very large proportion of foreign names. Emigrants, and sons of emigrants, remembering the respectable standing of the advocate in their own home, covet the title as a badge of distinction. The result is a host of shrewd young men, imperfectly educated, crammed so they can pass the bar examinations, all deeply impressed with the philosophy of getting on, but viewing the Code of Ethics with uncomprehending eyes. It is this class of lawyers that cause Grievance Committees of Bar Associations the most trouble.[72]

The battle over academic standards was fought during the first years of this century. Although the smoke did not clear entirely by 1920, the ultimate triumph of those demanding more stringent curricular and entrance standards at the expense of accessibility was assured by that date.

The battle was fought on three fronts: bar admission procedures, law school admission standards, and curricular requirements, including length of the law program.

As apprenticeship faded into memory, and training became the exclusive province of schools outside its immediate control, the profession began accrediting law schools. This was necessary if new recruits were to possess at least minimum skills. The American Bar Association, a national organization founded in the late seventies, gave this task to its new Section on Legal Education. As the years went on, the Section's certification requirements grew increasingly rigorous.

Accreditation at the national level worked hand-in-hand with bar examination standards at the state level. In 1870, only 16 jurisdictions prescribed some period of office training for persons wishing to sit for the bar examination. None allowed substitution of law school study for office work. A number had no bar examination at all. This situation began to change in the last two decades of the century. Even in more rural states, higher entrance standards to the Bar were supported. At a minimum, college attendance was required. Time spent in law school was allowed to substitute for office apprenticeship.[73] Where such substitution was permitted, it was natural to do so only when the applicant had been enrolled in an ABA-approved institution. This gave law schools a powerful incentive

to meet the national accreditation standards.

Law school admission standards were also a bone of contention. In 1890, 43 of the 61 law schools in the country had absolutely no entrance requirements at all. Those that did often did not even demand that a matriculant have earned a high school diploma. Under pressure from the ABA and, later, the Association of American Law Schools, this situation changed quickly.[74]

The AALS was founded by a group of the older, more prestigious schools in 1900.[75] The Association required as a condition of membership that schools accept a package of academic reforms that were significantly more demanding than the standards required by ABA accreditation rules. The first set of requirements in 1900 mandated that only high school graduates be admitted, that schools offer a two year program, and that adequate library facilities be made available. These criteria for Association membership became more stringent as the years progressed.

In addition to making it more difficult for students to get in, law schools began to give students more work to do once they did matriculate, moving toward a uniform, more rigorous, curriculum. This trend can best be seen by observing how the length of the typical law program expanded during this period. In 1890, seven schools required three years of full-time study. These represented 11.5% of the nation's schools. Thirty-one had two year programs (50.8%). Twenty years later, 58, or 46.8% of all schools had three year

programs. In 1920, 78.2% of American law schools required three years of study for the LL.B. degree.[76] In addition, greater numbers of subjects offered for more credit hours became the rule.

The ABA/AALS effort met significant resistance in its first years.[77] There were still powerful demographic forces at work, and schools could still offer traditional legal education to immigrants and their children, affording those with little formal education and limited funds access to the profession. But the schools that did not accept the ABA/AALS package were unable to provide a conceptual justification for such action that was acceptable to the dominant university and professional culture, and as their constituency narrowed, they lost out. Thus, the 1920s saw the final triumph of the accreditation and academic standards movement, and the homogenization of American legal education.

Our account of the early development of American legal education can really end here. Certainly, by 1920, the university had become the accepted home of recognizably modern legal training in this country. There were only a few dissenters within the profession or academic life who would have argued that its proper place was elsewhere.

This relatively "happy" ending for university legal education contrasts sharply with the result in England. This can be attributed to two fundamental differences. In the United States, universities sought affiliation with the law

from the outset. Although the association of legal training and higher education did not become a strong one until after the Civil War, the American situation was, in this respect, totally unlike that in England. Further, status differentials between institutions in this country, although they did exist, were not as crippling as those in Britain. Law was never associated in anyone's mind solely with less important, "trade" schools.

The second factor crucial to the more successful evolution of university legal education here is related to the nature of the American legal profession. When the social upheavals of the nineteenth century created the same strains and structural changes within the profession as had occured in England, and the apprenticeship experience became rapidly outmoded and inadequate, the American Bar was relatively united and thus able to develop a consistent ideology in support of university training. No split in professional ranks or intra-professional jealousies prevented lawyers from placing their full weight behind the university movement.

Related to these two fundamental factors is a third. In this country, there emerged a respected class of full-time academic lawyers. Again, unlike their British counterparts, they were not caught in a crossfire between colleagues on other faculties within the university and friends in the profession. With the help of the case method and its associated scientific ideology, they were able to forge

a consistent identity acceptable to both groups.

Although legal education has become much more a part of the university in this country than in England, law is still not closely integrated with other university studies. Despite the "law as a social science" and legal realism movements of the twenties and thirties, legal studies remain relatively isolated on most American campuses. This result is certainly, in part, a heritage of the practical orientation of the earliest law schools as well as the Langdell revolution. However, even more fundamental in this regard is the profession's doctrinal belief that law is a unique body of scientific knowledge, only to be understood by the initiated: a notion at complete odds with Blackstone's original idea that law should be an important part of every citizen's education. Thus, it is not surprising that students have never been moved by the possibility that law can be presented in a more holistic fashion, and that programs which integrate law and related disciplines have never been popular.

With the results of our Anglo-American investigations in hand, let us take a brief look at the development of university legal education in a significantly different country, Germany.

Legal training in Germany has always been associated with the universities. Why? In England, a strong central government was able to impose its own legal order, and chose to rely on an embroyonic apprenticeship system to produce the lawyers it needed when the universities failed to respond to the demands for legal talent thus created. In the balkanized German-speaking lands, on the other hand, local rulers solidified their power by employing legal talent, and indeed, an entire legal system, provided by their universities. The evolution of university legal education in Germany is tied to this fact.

The first German universities date to the fourteenth century. Unlike their older British and contintental counterparts, they did not originate spontaneously. Instead, they were founded by local governments who, in turn, secured recognition from some higher authority, either the Emporer or the Pope. Thus, Prague was established in 1348, Heidelberg in 1385, and Cologne in 1388; 13 others followed in the next 120 years. This pattern of close government involvement in university life continues to the present.

All were organized along the lines of the University of Paris. Although all four of the traditional faculties, theology, law, medicine, and philosophy (arts), were represented, the institutions were primarily theological. To the extent law was studied, canon law was the preferred subject. Germans wishing to pursue a career in civil law travelled

to Italy to study, bringing knowledge of Roman law home with them.

The reception of Roman law in Germany and the other continental nations was linked to this diffusion of the discipline from Italy. Most of the Italian-trained lawyers were clerics who, upon their return, were active in legal life. Many were employed by a local prince or municipal government. Even those employed by the church influenced the larger legal culture significantly, as ecclesiastical courts maintained jurisdiction beyond purely clerical matters during this period.

Native German law continued to dominate civic life through the middle of the fifteenth century. However, things began to change in the late 1400s. Academic jurists were successfully infiltrating the administrative and judicial branches of local governments. They preferred the Roman law they had learned in school, which they believed to be "rational", to the indigenous legal order. Thus, when emerging local sovereigns seeking to impose their own authority atop a medieval crazy quilt of rules and jurisdictions, asked their university-trained legal advisors to produce comprehensive new legal codes, the results were inevitably Roman in style and content. Too, when university-trained attorneys and judges proceeded with their work, they often introduced Roman legal concepts into court papers and verdicts. It was not Roman law as such that established itself in the sixteenth century, but academic jurists and

their "rational" approach to law.

Of course, these academics would not have successfully implanted Roman law had other powerful interests not also been in favor of its introduction. Territorial and municipal rulers were able to use Roman law to assert claims of political legitimacy at the expense of the Emporer, the Church, and local feudal lords. In addition, the rising mercantile class required the commercial and contractual guarentees that Roman legal doctrine offered.

These developments in municipal life had predictable effects within the university. Civil law became a much more popular subject; masters and students, now laymen, not clerics, grew more numerous everywhere. Several of the schools founded in the second half of the fifteenth century, including Basel (1460) and Tübingen (1477) were endowed from the outset with chairs in Roman law. Older universities followed suit. In several instances, Italian jurists were recruited to lecture on civil law. This occured at Freiburg and Vienna in the 1490s, and at least four other schools in the first two decades of the sixteenth century. At Heidelberg, a special residence for law students was established in 1498. By 1551, interest in law there was so great that the arts faculty complained that, "through the law faculty, every scholarly effort at the university has been pushed into the background."[78] Germans continued to travel to Italy to study civil law, as well. Between the years 1500 and 1600, 3630 Germans enrolled at the

universities of Bologna, Perugia, Siena, Pisa, and Padua for such purpose.[79]

Of course, these students were not all interested in Roman law for its own sake. As the civil law more firmly established itself, a working knowledge of the subject was thought essential for those wishing employment in the rapidly expanding local governmental bureaucracies. This was true whether one's job was a purely legal one or not. By the beginning of the seventeenth century, the tradition that higher civil service positions required a legal background was growing increasingly strong. University-trained jurists were leaders in the rise of the German middle class, displacing less educated nobles from positions in government service. A bureaucratic position was a frequent means of social advancement throughout the fifteen and 1600s. There were many jobs; the German-speaking lands were divided into 300 independent territories, and five times that many semi-autonomous units, each requiring its own set of officials.

In addition, according to Weber, the general political fragmentation that existed on the Continent prevented the formation of lawyers' guilds. Professional status was therefore subject to direct government regulation and, very often, only graduates of the sovereign's own local law school were admitted to practice.

Under such circumstances, it is not surprising that law enjoyed the greatest prestige of the four faculties during the seventeeth and eighteenth centuries. Theology

declined in importance as the universities became increasingly secularized. It was natural that rulers take an acute interest in the methods the law faculty was using to train qualified bureaucrats for the state. Curricula were regulated closely. A legal career was less likely by this time to represent a step up the social ladder. Most law students came from well-to-do families; poorer individuals generally studied with the less glamorous theology faculty, in preparation for a schoolmaster's career.

One interesting feature of this period illustrates the close relationship of the law faculty and the state. The strengthening of territorial sovereignty in the fifteenth and sixteenth centuries had caused older popular courts to be supplemented or replaced entirely by the administrative agencies of the prince or municipal government. This new judicial system was developed and staffed by officials with university training.

Where popular judges retained their places, they often turned to more learned jurists for expert legal advice. Litigating parties, too, would require counsel regarding the new civil law procedures and doctrine. Court documents of all sorts were forwarded for consideration to so-called Schöppenstühle, tribunals of legal scholars, most often composed entirely,[80] or in part, of local law faculties. Thus, during the sixteenth and seventeenth centuries, and even into the eighteenth, law faculty

members played a direct role in the everyday work of the courts. Judges often accepted draft verdicts from them, and in several instances, faculties served as local supreme courts, hearing final appeals of important cases.[81] During this period, certainly, legal theory did not develop in isolation from practice.

The eighteenth century was a watershed for German legal education. This was the period in which German universities, the first in Europe to accept modern philosophy and science, began to earn international reputations. Newer universities, including Halle (1694), which introduced the study of modern jurisprudence, were founded, The principles of free research and instruction became predominant.

As German universities moved into the modern era, the law faculty's involvement with the practice of law diminished. The judicial function was discarded in favor of teaching and the pursuit of "pure legal science". This shift in orientation was analagous to that in American legal education a century later. In order to remain a prestigious part of the German university, it became necessary for jurists to present law on the same level as philosophy or history, as a science, just as it became necessary to present American law "scientifically" in order for the subject to become an important part of higher education in this country. By the nineteenth century, the task of the law faculty was clearly, "to create the scientific knowledge

of law and to equip future administrators of the law with such knowledge,"[82] for students had to be made familiar with the "rational principles of all law."[83]

Unfortunately, it is impossible to accurately describe the particulars of German legal training during these centuries, for each territory had its own rules.[84] However, a few general themes can be outlined.

The German legal curriculum has always been more theoretical, and more closely integrated with other university subjects, than in the United States or England. This was true even before the shift towards "scientific" law in the eighteenth century, and is to be expected, given the long historical association in Germany of higher education and legal training, and the fact that law courses have served, not only to educate advocates and judges, but to prepare students for a variety of more responsible civil service positions. It has never been possible to teach law in a narrow, technical fashion in Germany. Such an approach would have been irrelevant to the needs of the majority of students planning bureaucratic careers. Thus, the curriculum has included much legal history, jurisprudence, and international law. In addition, economics and political science have been incorporated as primary features of legal studies.

To partially offset this theoretical orientation, German legal education has traditionally been divided

into two phases. The first has been the classroom experience itself. After approximately three years of study, students have taken the first of two state examinations. Those who have successfully completed this phase of training have then entered a more practical phase, lasting two-three additional years, which has typically included a series of clerkship assignments with higher and lower courts, a state's attorney's office, and one or more government agencies. Only after passing a second state examination at the close of this cycle of training posts has the student been able to begin his or her career.

It has never been necessary that prospective lawyers actually receive a university law degree. All that has been required is that they have attended lectures in certain prescribed subjects.[85] In fact, because of the German tradition of Lernfreiheit, or "freedom in learning", students have never actually had to attend lectures, either. Private cram courses, whose subjects are closely geared to state bar examinations, have always been popular.

Legal education in Germany today follows this basic outline. Clinical exercises are now included in the required course curriculum, as universities have taken more of the burden of providing practical training upon themselves. Although lectures still predominate, they are no longer universal. The American case method has been adopted in many instances. German legal training is still strongly

oriented toward the judicial role and does little to encourage a career in business. Indeed, according to a recent survey, only 7-8% of all graduates reported an intent to pursue a commercial career.[86] This is in sharp contrast to the situation in the United States.

* * *

We have seen how three different systems of legal education have developed. Even the most interested reader may be forgiven if he or she asks, "What difference does it all make?" In concluding this study, let us take stock by asking whether a system of education may affect the basic structure of a national legal system.

Max Weber thought this was the case. Weber identified two ideal types of legal training; in one, law was taught as a craft, in the other, as a theory or science. Weber thought the first was best exemplified by the English apprenticeship system, the second by continental legal education.

Where law was taught by practitioners themselves, Weber argued,

> (N)o rational procedure could emerge, nor even a rationalization of the law as such, because the concepts thus formed are construed in relation to...events of everyday life, are distinguished from each other by external criteria, and extended in their scope, as new needs arise.[87]

Under such a system, law moves "from the particular to the particular, but never tries to move from the particular to general propositions in order to be able

subsequently to deduce from them the norms for new particular cases."[88]

Elsewhere, Weber had identified four ideal-typical legal systems. The fourth, the one most closely associated with capitalism and modern industrial development, was one of "logically formal rationality". In such a system, rules were expressed by using abstract concepts which themselves formed a self-contained system of thought. Weber believed that "logically formal rationality" had achieved its most perfect expression in the system developed by the German legal scholars of the nineteenth century, whose abstract rules of law constituted a complete, unitary body of knowledge. Civil lawyers were trained to apply rules of legal logic to any set of circumstances in order to arrive at a proper decision. If the primary text, whether the Corpus Juris or one of the later national legal codes, were interpreted properly, all questions could be answered. In a more general sense, this was precisely the approach developed in continental universities from the twelfth century on.

Weber classified English common law as "substantively irrational". Law-making in such a system was guided by one's reaction to an individual case, not by general rules. As we have seen, Weber was able to associate this with the kind of training English lawyers and judges had always received.[89]

* * *

Unfortunately, typologies of law, and differences, real or imagined, between continental and common law systems lie beyond the scope of this paper. Some conclusions about legal education may, however, be in order. As Western nations have modernized, their methods of educating lawyers seem to have converged. Three general tendencies can be identified.

First, there is a general movement toward the differentiation of training and practice functions within the profession. This has clearly been the case in the United States and England, where lawyers were forced to relinquish their direct control of legal education. In Germany, too, we have seen that the distinction between a practicing law faculty and a teaching law faculty became more sharply drawn in the eighteenth and nineteenth centuries, and that during the same period, practical training developed into an entirely separate phase of the education process.

Second, as professional training grows more distinct, it becomes a function of higher education. Only the universities seem to have the institutional capability to process the large number of trainees required by rapid commercial and industrial expansion, and to effectively meet the demands created by upwardly mobile members of the lower and middle classes. This was clearly the case during the nineteenth century in England and the United States. To some extent, it was also true in sixteenth

century Germany.

Finally, when universities do gain control of the training function, they do so only after convincing themselves that law is "rational" or a "science", that law really belongs in their curricula. The profession often benefits from this, for it can substantiate claims of unique competence and solidify prestige and influence using such notions.

FOOTNOTES

[1] Although there were no lawyers, or law schools, as we understand those terms, in Rome, friends of those involved in litigation might plead on behalf of the litigant or accused. Quintilian, in his Institutes of Oratory (Book XII, Chapter iii), described a suggested course of study for such advocates. Essential were a knowledge of the civil law and how it was construed, familiarity with problems involving the conflicting laws of different jurisdictions, and a grasp of the strategies one might use to handle adverse precedents. In addition, the orator was to know something of the main elements of the "custom and religion of the state." Finally, a command of rhetoric was required. Such proficiency took a good deal of practice, and was therefore best accomplished during a period of apprenticeship. Thus, a combination of intellectual and practical training was proposed. John S. Brubacher, "The Evolution of Professional Education," Education for the Professions, ed. Nelson Henry, (Chicago: University of Chicago Press, 1962), 48-49.

We shall note many points of similarity to and divergence from Quintilian's ideas in the following pages.

[2] The 1936 edition of Hastings Rashdall's classic account of the medieval university is still considered the best source on this subject, and has provided much of the background information presented here.

[3] The term did not necessarily imply that one had earned a degree specifically in law. J.A.C. Smith, Medieval Law Teachers and Writers (Ottawa: University of Ottawa Press, 1975), p. 6.

[4] It was under the Byzantine Emporer Justinian that the system of Roman jurisprudence was compiled and codified. The resulting collection, the Corpus Juris Civilis, includes the Institutes, Digest (or Pandects), Code, and Novels; it still serves as the jurisprudential foundation of most continental legal systems. The designation Corpus Juris Civilis is not thought to have been used until the early 1600s.

[5] The Chancellor is a key figure in the traditional academic structure of the period. An appreciation of his role is essential to an understanding of the organization of the medieval university in the North.

Because education in northern Europe was limited to cathedrals and monasteries, the requirement that the Church license the teacher was readily accepted. Any official of

the Church so motivated might gather scholars around him. If this did not occur, a wandering scholar might be hired for such purpose. Beginning in the eleventh century, the school master was made a regular member of the cathedral. Frequently, this was accomplished in northern Europe by giving the cathedral chancellor the duty of educational supervision. It became common for the chancellor to delegate some or all of his teaching authority to others, and by the twelfth century, the chancellor might often grant permission to open schools for individual profit in the church community.

By a decretal of Alexander III, and action taken by the Third Lateran Council of 1179, church school masters were forbidden to accept a fee for the award of a teaching license. Further, they were required to grant such license to all qualified applicants. Thus, the chancellor, a church official, also became an educational official who measured the fitness of teaching candidates, and permitted them to earn their living.

[6] Indeed, in the early days, many Italian universities had no faculty of theology at all. A school of theology was not established at Bologna, for example, until 1360.

[7] Hastings Rashdall, The Universities of Europe in the Middle Ages, ed. F.M. Powicke and A.B. Emden (Oxford: Clarendon Press, 1936), i, p. 321.

[8] Rome even went so far as to ban Parisian study of the heathen Aristotle for a period during the 1200s.

[9] Later, Cambridge, which was far less important during the medieval period, was patterned after Oxford.

[10] Other historians dispute Rashdall's argument. All agree, however, that the studium generale at Oxford was established in the latter years of the twelfth century. We know the academic community there numbered some 3000 by 1209. Rashdall, iii, p. 33.

[11] W.H.G. Armytage, Civic Universities (London: Ernest Benn, Ltd., 1955), p. 32.

[12] This was also the case at Cambridge a century or so later; Trinity Hall, founded in 1350, was designed as a college for the study of civil and canon law.

[13] In the twelfth century, the occasional party's representative was termed a responsalis (an "answerer"). The responsalis

became an "attorney" in the thirteenth century, and was generally appointed for a single case. Men with no suitable "friend" were forced to hire court clerks or sheriff's servants to appear on their behalf. Thus, a group of experienced attorneys arose in each county.

[14] T.F.T. Plucknett, A Concise History of the Common Law (5th ed; Boston: Little, Brown and Co., 1956), p. 217-8.

[15] Further, faculty members were all clerics, and as such, may have been forbidden to teach common law. There is one reference in the literature to an otherwise unspecified "papal order" which prohibited such activity. Armytage, p. 55.

[16] Law French had originally been the normal French of the medieval period. As the links between the French and English aristocracy grew more tenuous, law French became more technical. Only a few useful words (defy, mortgage, defer) entered the mainstream of the English language.

Law French apparently evolved into a rough mixture of pidgeon French and English. In 1688, for example, it was recorded that a prisoner condemned by the Chief Justice of Common Pleas at Salisbury in 1631, "ject un Brickbat a le dit Justice que narrowly mist." Alan Harding, A Social History of English Law (Baltimore: Penguin Books, 1966), p. 205. Law French did not completely disappear until the early eighteenth century.

[17] And it is a very long and complicated story, indeed. The clearest and most complete exposition is found in A.M. Carr-Saunders and P.A. Wilson, The Professions (Oxford: Clarendon Press, 1933), p. 31-8. To prevent confusion, I shall refer to "barristers" and "solicitors" throughout, although this nomenclature did not become completely established until relatively recently. In fact, during the medieval period, advocates might be either "Serjeants-at-law" or "apprentices of the court" (these had already successfully completed their period of training and were permitted to appear in court). Members of the junior branch of the profession were either "attorneys", who were associated with particular courts, or "solicitors", who were not. It was not until 1873 that the formal distinction between attorney and solicitor was finally dropped, and the former term abolished.

[18] There is virtually no hard evidence as to the exact origins of the Inns.

[19] In 1425, each boasted of more than 200 students, exceeding

the enrollment of any college at Oxford or Cambridge. In addition, of course, the Inns served as residences for lawyers. Harding points out that the enforcement of residence rules during court vacations was important, for the Inns could not have served as hotels if they were open only during law terms. When the real courts were in recess, it was natural for members to fill the gap with moots and readings. Harding, p. 188.

[20] A detailed description of the course of study at the Inns can be found in Kenneth Charlton, Education in Renaissance England (London: Routledge and Kegan Paul, 1965), p. 173-6.

[21] quoted in Joan Simon, Education and Society in Tudor England (Cambridge: Cambridge University Press, 1966), p. 13.

[22] Harding, p. 212.

[23] Armytage, p. 77.

[24] quoted in Lawrence A. Cremin, American Education: The Colonial Experience, 1607-1783 (New York: Harper and Row, 1970), p. 199.

[25] quoted in Simon, p. 55.

[26] ibid.

[27] Mark H. Curtis, Oxford and Cambridge in Transition (Oxford: Clarendon Press, 1959), p. 150.

[28] Provision for written examinations was made in 1836 and 1837. Before then, only a judicial interview, purely a formality, was required.

[29] Brian Abel-Smith and Robert Stevens, Lawyers and the Courts (Cambridge, Ma.: Harvard University Press, 1967), p. 64.

[30] ibid., p. 65.

[31] The Inns' response was the formation of a joint Council of Legal Education in 1852. None of the Commission's specific proposals were acted on.

[32] Eventually, under the threat of Parliamentary action, the Inns did institute a compulsory Bar entrance examination in 1872.

[33] The predecessor of today's Law Society, which represents the interests of all solicitors, was established in 1739. Concerned with proposals regarding self-discipline, court procedure, qualifications for admission, and the education of articled clerks, it played an important role in the development of legal education.

[34] These were not well attended, as students found private crammers better preparation for the solicitors' examinations, and they were abandoned in 1892.

[35] Oxford and Cambridge dons were required to be clergymen. Undergraduates could not matriculate without subscribing to church doctrine. Most graduates in the eighteenth and early nineteenth centuries (Oxford: 64.2%; Cambridge: 54.3%) went into clerical careers. Michael Sanderson (ed.), The Universities in the Nineteenth Century (London: Routledge and Kegan Paul, 1975), p. 8-9.

[36] Sanderson reports that 90% of students at the two schools between the years 1752 and 1886 came from these groups. p. 17.

[37] As we shall see, Blackstone's experiment had its greatest influence in the United States.

[38] quoted in William R. Johnson, Schooled Lawyers: A Study in the Clash of Professional Cultures (New York: New York University Press, 1978), p. 6-7.

[39] Law became a separate school in 1872.

[40] quoted in Abel-Smith and Stevens, p. 179.

[41] In 1969, 81% of those called to the Bar had a university degree (71% in law). In the same year, 47% of those admitted as solicitors held a university degree (41% in law). Charles Eisenmann, The University Teaching of Social Sciences: Law (Paris: UNESCO, 1973), p. 69.

[42] To become a solicitor, one must pass an examination given by the Law Society, and serve for a period of years as an articled clerk. To take the exam, one need only have

spent a year in an approved law course. Barristers are required to study for a year at a School of Law established by the Inns of Court themselves, keep a specified number of dining terms at one of the Inns (!), and pass an examination offered by the Inns' Council of Legal Education. A one year period of apprenticeship after the exam is also required.

Instruction in the School is extremely limited in scope; virtually all students rely on crammers for examination preparation. The School also offers moot court exercises, but only 2% of the enrolled students participate.

[43] Besides Oxford and Cambridge, the four London colleges, and nine older provincial universities, law is taught at ten provincial universities established since World War II, and at 19 local polytechnic law schools founded since 1966.

[44] quoted in V.H.H. Green, The Universities (Baltimore: Penguin Books, 1969), p. 101.

[45] Parliamentary Acts of 1854 and 1856 allowed nonconformers to matriculate as undergraduates for the first time. The Universities' Test Acts of 1871 permitted non-church members to receive fellowships.

[46] There were, of course, very distinguished exceptions. John Austin was appointed to the Chair of Jurisprudence and the Law of Nations at University College, London, in 1827. F.W. Maitland taught at Liverpool in the eighties.

[47] In the West, it was impossible to speak of law as an organized profession; apprenticeship programs were not institutionalized.

[48] In Massachusetts, for example, a three year term of apprenticeship for college graduates, and a four to seven year term for non-graduates was standard. In addition, two years of further practice in both lower and higher courts were required before full professional privileges were granted. However, there was no examination at any point of a student's legal knowledge; qualification was merely a question of fulfilling a residence requirement. The specification of a shorter training period for those holding college diplomas was typical.

Reed suggests that the common reliance on relatively long periods of apprenticeship was designed to compensate for the lack of adequate bar examinations.

[49] quoted in Johnson, p. 4.

[50] ibid., p.5.

[51] Johnson makes the ironic point that the texts and treatises produced by the first professors of law strengthened the apprenticeship experience by providing study materials oriented toward the American experience. p. 8.

[52] This could only occur in jurisdictions which did not limit the number of trainees a single law office could accept. In Massachusetts, for example, each office was permitted only three clerks. Gerard W. Gawalt, The Promise of Power (Westport, Ct.: Greenwood Press, 1979), p. 137. In addition, certain localities required that the apprenticeship experience take place in the city or county where the student wished to enter practice. This prevented students from moving temporarily in order to obtain training.

Note that England had similar regulations regarding the number of apprentices allowed in a single law office.

[53] Yale did exactly this in 1826.

[54] Johnson, p. 12.

[55] Prior to 1860, only Harvard, Virginia, and Michigan paid their law faculties a direct salary.

[56] When he accepted the Dane Chair in 1829, Story was an Associate Justice of the U.S. Supreme Court. He had previously served as Massachusetts's Chief Justice.

[57] Numbers alone tell the story. In 1828, the year before Story's arrival, Harvard's enrollment was four. In 1844, the year before Story's death, the law school had 163 students. Albert J. Harno, Legal Education in the United States (San Francisco: Bancroft-Whitney, 1953), p. 38.

However, in Story's own words, "educational standards were subordinated to the ambition of building up attendance." Robert Stevens, "Two Cheers for 1870: The American Law School," Law and American History, ed. Donald Fleming and Bernard Bailyn (Boston: Little, Brown and Co., 1971), p. 417.

[58] Lawrence M. Friedman, A History of American Law (New York: Simon and Schuster, 1973), p. 281.

[59] Brainerd Currie, "The Materials of Law Study" 3 Journal of Legal Education 331, 366 (1951).

[60] The nineteenth century law curriculum was certainly lax by modern standards. Credit was freely given for study supervised by an attorney, or even unsupervised reading. Admission requirements were non-existent; the LL.B. was an undergraduate degree granted after only two or three semesters of work. However, one must bear in mind that the law school was not considered the primary mode of legal training, and was not intended to certify professional competence. It was simply an additional means of receiving part of one's legal education.

[61] For much of this analysis, I am indebted to Johnson's case study of the Wisconsin legal experience.

[62] In 1869, the year he took office, Eliot stated, "No object of human inquiry can be out of place in the programme of a real university. It is only necessary that every subject should be taught at the university on a higher plane than elsewhere." Laurence R. Veysey, The Emergence of the American University (Chicago: University of Chicago Press, 1965), p. 90.

[63] Alfred Z. Reed, Training for the Public Profession of Law (Boston: Merrymount Press, 1921), p. 198.

[64] Friedman, p. 526. 3/4 of these were associated with a university. Ibid., p. 525.

[65] Ibid., p. 526.

[66] In 1886, Eliot recalled how he first met Langdell:

> I remembered that when I was a Junior in College in the year 1851-1852, and used to go often in the early evening to the room of a friend who was in the Divinity School, I there heard a young man who was making notes to Parsons on Contracts talk about law...I was a mere boy, only 18 years old, but it was given to me to understand that I was listening to a man of genius.

And then:

> In the year 1870, I recalled the remarkable character of that man's expositions, sought him in New York and induced him to become Dane Professor. So he became Professor Langdell.

James W. Hurst, The Growth of American Law (Boston: Little, Brown and Co., 1950), p. 261-2.

[67] Of course, from Langdell's point of view, to teach law as a science, one needed scientists, not practitioners.

[68] As Friedman points out, Langdell's model of "science" was more like Euclidean geometry than anything else. He was certainly not thinking of an experimental or experiential body of knowledge. Friedman, p. 535.

[69] Stevens, p. 428-9. Of course, night and evening schools were made physically possible only after the widespread introduction of gas and electric lighting in the latter half of the century.

[70] During most of the nineteenth century, the tendency of law schools to affiliate in some fashion with colleges and universities was enhanced by the prestige associated with the latter's name, and most importantly, by their authority to confer degrees. Such authority was generally granted by the state legislature in the school's charter. Tradition, at least, required that the LL.B. be awarded by an academic body, even if it were only for vocational work. Not until 1866 was an independent law school incorporated with the power to confer the LL.B. This did not really become common until New York Law School secured state permission to award degrees in the nineties. By 1917, there were 26 independent degree-conferring schools.

[71] Jerold S. Auerbach, "Enmity and Amity: Law Teachers and Practitioners, 1900-1922," Law and American History, ed. Donald Fleming and Bernard Bailyn (Boston: Little, Brown and Co., 1971), p. 586.

[72] quoted in Stevens, p. 463, note 79.

[73] No state during this period completely eliminated the possibility of qualifying through apprenticeship training alone. Even as late as 1917, none required law school attendance, although by that date, most who wished to qualify for the Bar went to law school. Indeed, office training is at least a theoretical alternative to law school study in many states.

[74] By 1920, virtually all American law schools had imposed some form of entrance requirement. 55 of 142 (38.7%) required that applicants have completed at least some college work.

[75] 32 of the then 102 law schools became charter members. Stevens, p. 456.

[76] All these data are taken from Reed, p. 448-9.

[77] During the period 1901-1916, the numbers of students attending AALS schools rose only 24%; those attending non-member institutions doubled in numbers. Stevens, p. 457, note 50.

[78] Quoted in James H. Overfield, "Nobles and Paupers at German Universities to 1600," 4 Societas 175, 196. A similar protest had been made at Leipzig in 1511.

[79] Ibid., p. 197.

[80] As at Wittenburg and Jena.

[81] Dalm reports that law faculties were often so busy writing opinions that they had little time for students or legal scholarship!

[82] Friedrich Paulsen, The German Universities and University Study, trans. Frank Thilly (New York: Chas. Scribner's Sons, 1906), p. 391.

[83] Ibid., p. 393.

[84] Even after unification, no national system was imposed until 1930.

[85] Until the end of the nineteenth century, it was required that a prospective law student have completed his preparatory work in a classical secondary school. If nothing else, this assured a thorough knowledge of Latin and Greek. Today, there is no pre-selection or limitation of students. In fact, of all the European countries, only Belgium has significant requirements regarding the pre-law curriculum.

[86] Dietrich Rueschemeyer, Lawyers and Their Society (Cambridge, Ma.: Harvard University Press, 1973), p. 103.

[87] Max Rheinstein (ed.), Max Weber on Law in Economy and Society (Cambridge, Ma.: Harvard University Press, 1954), p. 201.

[88] Ibid., p. 202.

[89] Weber's discussion of the English legal system was crucial

for his analysis of the relationship between a nation's legal order and economic system. Weber argued that capitalism had been likeliest to develop in areas in which a logically and formally rational law had been established. England, of course, was the great exception.

Most who have followed Weber have reclassified the English legal system, and not changed his basic theory. Scholars have argued that judge-made law is basically rational, since it is required, at least in principle, to follow precedent.

BIBLIOGRAPHY

Abel-Smith, Brian and Stevens, Robert. In Search of Justice. London: Penguin Press, 1968.

Abel-Smith, Brian and Stevens, Robert. Lawyers and the Courts. Cambridge, Ma.: Harvard University Press, 1967.

Ablard, Charles D. "Observations on the English System of Legal Education". 29 Journal of Legal Education 148 (1978).

Armytage, W.H.G. Civic Universities. London: Ernest Benn Ltd., 1955.

Armytage, W.H.G. The German Influence on English Education. London: Routledge and Kegan Paul, 1969.

Auerbach, Jerold S. "Enmity and Amity: Law Teachers and Practitioners, 1900-1922," ed. Donald Fleming and Bernard Bailyn, 551-601. Boston: Little, Brown and Co., 1971.

Ben-David, Joseph. Centers of Learning. New York: McGraw-Hill, 1977.

Bendix, Reinhard. Max Weber: An Intellectual Portrait. London: Wm. Heinemann, Ltd., 1960.

Bledstein, Burton J. The Culture of Professionalism. New York: Norton and Co., 1976.

Brickman, William W., "Professional Education Outside the U.S.A.," Education for the Professions, ed. Nelson Henry, 68-100. Chicago: University of Chicago Press, 1962.

Brubacher, John S., "The Evolution of Professional Education," Education for the Professions, ed. Nelson Henry, 47-67. Chicago: University of Chicago Press, 1962.

Bruford, W.H. Germany in the Eighteenth Century. Cambridge: Cambridge University Press, 1935.

Campbell, Enid. "German Influences in English Legal Education and Jurisprudence in the Nineteenth Century." 4 University of Western Australia Annual Law Review 357 (1959).

Carr-Saunders, A.M., and Wilson, P.A. The Professions. Oxford: Clarendon Press, 1933.

Charlton, Kenneth. Education in Renaissance England. London: Routledge and Kegan Paul, 1965.

Cremin, Lawrence A. American Education: The Colonial Experience, 1607-1783. New York: Harper and Row, 1970.

Currie, Brainerd. "The Materials of Law Study." 3 Journal of Legal Education 331 (1951).

Curtis, Mark H. Oxford and Cambridge in Transition, 1558-1642. Oxford: Clarendon Press, 1959.

Dahm, Georg, "On the Reception of Roman and Italian Law in Germany," Pre-Reformation Germany, ed. Gerald Strauss, 282-315. New York: Harper and Row, 1972.

Eisenmann, Charles. The University Teaching of Social Sciences: Law. Paris: UNESCO, 1973.

Friedman, Lawrence M. A History of American Law. New York: Simon and Schuster, 1973.

Gawalt, Gerard W. Massachusetts Lawyers: A Historical Analysis of the Process of Professionalization, 1760-1840. Ann Arbor, Mi.: University Microfilms, 1970.

Gawalt, Gerard W. The Promise of Power. Westport, Ct.: Greenwood Press, 1979.

Gower, L.C.B. "English Legal Training". 13 Modern Law Review 137 (1950).

Green, Andrew W. "Legal Education in England". 28 Journal of Legal Education 137 (1976).

Green, V.H.H. The Universities. Baltimore: Penguin Books, 1969.

Hamlin, P.M. Legal Education in Colonial New York. New York: N.Y.U. Law Quarterly Review, 1939.

Harding, Alan. A Social History of English Law. Baltimore: Penguin Books, 1966.

Harno, Albert J. Legal Education in the United States. San Francisco: Bancroft-Whitney, 1953.

Hegarty, T.B. "Education for the Legal Profession," Education for the Professions, ed. John D. Turner and James Rushton, 73-89. Manchester: Manchester University Press, 1976.

Holborn, Hajo. A History of Modern Germany. New York: Alfred A. Knopf, 1959.

Holdsworth, Sir William. A History of English Law. 4th ed. London: Methuen and Co., 1936.

Hurst, James W. The Growth of American Law. Boston: Little, Brown and Co., 1950.

Jencks, Christopher, and Riesman, David. The Academic Revolution. Garden City, N.Y.: Doubleday and Co., 1968.

Johnson, William R. Schooled Lawyers: A Study in the Clash of Professional Cultures. New York: New York University Press, 1978.

Kunkel, Wolfgang, "The Reception of Roman Law in Germany: An Interpretation," Pre-Reformation Germany, ed. Gerald Strauss, 263-281. New York: Harper and Row, 1972.

Musgrave, P.W. Society and Education in England Since 1800. London: Methuen and Co., 1968.

Overfield, James H. "Nobles and Paupers at German Universities to 1600". 4 Societas 175 (1974).

Paulsen, Friedrich. The German Universities and University Study. Trans. Frank Thilly. New York: Chas. Scribner's Sons, 1906.

Perry, Walter C. German University Education. London: Longman, Brown, Green, and Longmans, 1845.

Plucknett, T.F.T. A Concise History of the Common Law. 5th ed. Boston: Little, Brown and Co., 1956.

Rabel, Ernst. "The System of Legal Education in Germany." 1930 Journal of the Society of Public Teachers of Law 22.

Rashdall, Hastings, The Universities of Europe in the Middle Ages. Ed. F.M. Powicke and A.B. Emden. Oxford: Clarendon Press, 1936.

Redlich, Josef. The Common Law and the Case Method in American University Law Schools. New York: Carnegie Foundation, 1914.

Reed, Alfred Z. Training for the Public Profession of Law. Boston: Merrymount Press, 1921.

Rheinstein, Max. "A Comparison of Legal Education in the United States and Germany." 1938 Wisconsin Law Review 5.

Rheinstein, Max (ed.). Max Weber on Law in Economy and Society. Cambridge, Ma.: Harvard University Press, 1954.

Rosenberg, Hans. Bureaucracy, Aristocracy, and Autocracy: The Prussian Experience, 1660-1815. Cambridge, Ma.: Harvard University Press, 1958.

Rueschemeyer, Dietrich. Lawyers and Their Society. Cambridge, Ma.: Harvard University Press, 1973.

Sanderson, Michael (ed.). The Universities in the Nineteenth Century. London: Routledge and Kegan Paul, 1975.

Schachner, Nathan. The Medieval Universities. New York: Frederick A. Stokes Co., 1938.

Schweinburg, Eric F. Law Training in Continental Europe. New York: Russell Sage Foundation, 1945.

Shartel, Burke. "Report on German Legal Education." 14 Journal of Legal Education 425 (1962).

Simon, Joan. Education and Society in Tudor England. Cambridge: Cambridge University Press, 1966.

Smith, J.A.C. Medieval Law Teachers and Writers. Ottawa: University of Ottawa Press, 1975.

Stevens, Robert. "Two Cheers for 1870: The American Law School," Law and American History, ed. Donald Fleming and Bernard Bailyn, 405-518. Boston: Little, Brown and Co., 1971.

Veysey, Laurence R. The Emergence of the American University. Chicago: University of Chicago Press, 1965.

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